



**MINUTES
CITY COUNCIL SPECIAL MEETING
November 22, 2022**

CALL TO ORDER

The meeting was called to order at 5:00 pm.

Present: Mayor: Charlie Miner; Council: Jahn Dyvik, Mike Feldmann, Gina Joyce, and Deirdre Kvale

Staff Present: City Administrator: Scott Weske; Fire Chief: James Van Eyll; and City Attorney: John Thames

Absent: None

APPROVE AGENDA

A motion was made by Dyvik, seconded by Miner, to approve the agenda as presented. Ayes: all.

PLEDGE OF ALLEGIANCE

BUSINESS ITEMS

Mayor Miner noted that Fire Chief Van Eyll had another meeting and could only attend the beginning of this meeting. He mentioned that the Fire Department is looking for an update from the Council on a transition plan and the next steps with Fire Chief Van Eyll now leaving the department.

Review of Future Fire Services Community Open House Comments and Feedback

Mayor Miner reported that attendance at the Future Fire Services Community Open House was even higher than he had expected. He recalled that City Clerk Moeller had estimated attendance may have been right around 200 people. Additionally, the City had also received a handful of email comments from community members.

Council member Dyvik voiced that he was disappointed in his own personal performance at the Open House and wanted to apologize that he wasn't able to focus on some of the deeper details that were not included on the slides. He questioned whether incoming Orono Council member Benson may be open to discussing the Fire Board concept; however, he was unsure how the other Orono Council members would feel as well.

Mayor Miner shared that he had spoken with Orono Mayor Walsh and some of their Council following the Open House.

Council member Dyvik reflected that he thought the meeting went well and noted that he wondered if there may be some way to retain Fire Chief Van Eyll if Orono would agree to the Fire Board concept. He had previously looked forward to the negotiation committee meetings with Orono because he felt they were making progress at that time; and had even envisioned further meetings becoming a regular thing for other issues related to the two cities as a way to bridge the gap and open communications.

Council member Kvale questioned whether being involved in the negotiating committee was actually part of Orono's strategy to make it appear as though they were negotiating when all along the idea was for them to have their own Fire Department.

Mayor Miner invited former City Attorney, Arlo Vande Vegte, to address the Council and share his thoughts on this situation.

Mr. Vande Vegte commented that he was astounded by the history of the situation and came away from the Open House with a sense that how Orono has gone about their actions has been inequitable and unfair. He indicated that he is a retired lawyer that no longer has a license to practice, nor is the City his client, but he opined that if the City is of the mindset that they want to put themselves in a position where they can better negotiate, he believes that they will have to deal in a very harsh manner with Orono. He found it to be a difficulty that Fire Chief Van Eyll is now basically Orono's employee because that essentially means he is both an agent of Long Lake and an agent of Orono. If Orono asks him what was said at this meeting, he will be put in a position that he will have to tell them. He confirmed that everything needs to be transparent, but it distresses him that the City's employee got poached or maneuvered into a position where he switched sides. He pointed out the legal significance of the situation, and added that another significant issue is that so many of the firefighters also appeared to have 'gone over'. He gave a brief overview of the situation in the late 1982 when Long Lake took on the City of Orono surrounding the Stoneridge development issue. His suggestion to the Council at that time had been to get some political muscle individuals involved, and on that advice, the City had then chosen to go to the law firm of Larkin Hoffman. He explained that it was only after the matter was taken to trial and they were awaiting the court's decision that Orono finally came back to the City and suggested that they talk about the situation and were able to negotiate a deal. In reviewing the most recent contracts, he noticed a very interesting line in a contract that basically says that Long Lake will never attempt to annex land from Orono into the City, which left him with the impression that there is an old grudge at play in the current situation. He felt a grudge may have been exacerbated by Long Lake leaving its contract with the Orono Police Department as well and noted that when that had happened, he knew something retaliatory would occur because Orono would not take that lying down, and he explained that he truly believes the current Fire Department situation is a result of that choice. He believes that there are people holding old grudges and, to him, it looks like Orono intends to pound Long Lake until they either give up or go away. He observed that if he were still practicing law, he would give the advice that Long Lake needs to get muscle and believes that they may have grounds for things such as: tortious interference with contracts; declaratory judgement; declaring the City of Orono in breach of the existing contract; and injunctive relief. Addressing these issues would mean spending quite a bit of money, but he believes it boils down to whether or not the Council thinks this is worth fighting for and if they are ready to 'take off the gloves', because, in his opinion, that is what it will take in order to take on the City of Orono.

Council member Kvale commented that, in her opinion, she thinks that Orono has committed some egregious acts because there is an existing contract between the cities that involves other parties. She stated that Long Lake would be in breach if they do not provide services through the end of the contract.

Mr. Vande Vegte noted that the City could still provide services to Medina unless they opt out.

Council member Kvale expressed concern about having the support to run the Fire Department with regard to personnel because it appears as though personnel are also taking sides. She added that it has been suggested that the City would not end up with any firefighters unless they agree to go along with Orono's take over.

Mr. Vande Vegte shared examples from former clients related to interference with contractual relationships. He pointed out that when the firefighters take a public position that Long Lake needs to just fold and let Orono have their way, this indicates to him that there is more to the story and underlying facts that may need to be found.

Council member Dyvik mentioned that he was not sure that the entire Fire Department has decided that Long Lake needs to let Orono have their way, and explained that it may just be the vocal group of about a dozen firefighters giving that impression.

Council member Joyce noted that one of the vocal firefighters is married to an Orono Council member which makes it 'feel' like a conflict of interest. She believes the Fire Department is being fed a false narrative that it is impossible to create a fire district and that part of Orono's strategy has been to spread false information. She asked Mr. Vande Vegte to address a comment he had made to her previously about a good faith clause.

Mr. Vande Vegte explained that virtually every contract in the State, other than employment contracts, have an implied covenant of good faith and fair dealing which means you cannot make a contract with someone and then start intentionally doing things to undermine the performance of the contract. If the City decides to go forward with an action related to that implied covenant, it will need to have a very orderly process to gather information first. He referenced the possibility of tortious interference with relation to the employment contract. He stated that the good faith and fair dealing could have something to do with Orono basically looting the City's staff and according to the contracts, Long Lake is the employer and is responsible for providing services. He observed that it appears that Orono is meddling with the City's ability to provide those services, per the contract, in unfair and unequitable ways.

Council member Dyvik responded that he had not really thought about a possible legal angle to resolving this issue, but has thought about whether the City should call Orono's bluff because he does feel as though they are trying to force the City's hand with their actions.

Mr. Vande Vegte shared stories of what had happened with the Stoneridge situation and actions Orono had taken to try to get City Code changed behind the scenes after suggesting mediation, and cautioned the Council to think long and hard about this. He noted that he gets the sense that the Council is afraid that if they give in and let Orono have their way in this, that the expectation is that Orono will then twist the knife as soon as they have a chance.

Council member Joyce stated that Orono has tried to absorb Long Lake before and they have stated in their public meetings that 'it was supposed to be that way all along'. She voiced concern that their current actions are intended to be a step towards another attempt to do so.

Mr. Vande Vegte recalled that the issue of an annexation was submitted to a referendum more than ten years ago and lost.

Council member Joyce understood that, but felt the losing vote represented yet another grudge that Orono is holding against Long Lake.

Mayor Miner thanked Mr. Vande Vegte for spending some time talking to the Council and sharing some of his historical knowledge.

Discuss Fire Chief Position

Mayor Miner asked Fire Chief Van Eyll to fill the Council in on the current ranking structure in the Fire Department.

Fire Chief Van Eyll provided a review of the organizational structure within the Fire Department.

Council member Dyvik asked, if the Council brings in candidates for a new interim Fire Chief, whether Fire Chief Van Eyll would be a part of that process.

Fire Chief Van Eyll replied that he can absolutely be a part of the process and noted that he will still be with the City until December 29, 2022.

Council member Dyvik stated that in the meantime while he is a Long Lake employee, he expects that Fire Chief Van Eyll would not be meeting with Orono and planning for his employment.

Van Eyll noted that he had been over in Orono recently to have a discussion about the ladder truck they had purchased, but that had been his only meeting.

Council member Dyvik emphasized that he wanted it to be clear that the expectation from the City is that Fire Chief Van Eyll will be 100% for Long Lake until December 29, 2022.

Van Eyll assured the Council that he would be dedicated to the City until December 29, 2022 and following that date, would be willing to help out wherever he can.

Closed Session Pursuant to Minn. Stat. 13D.05, Subd. 3 (c)(3): Develop or Consider Offers/Counteroffers for Purchase or Sale of Real Property Located at 340 Willow Drive N and Other Fire Department Property

A motion by Dyvik, seconded by Miner, to move into Closed Session pursuant to Minn. Stat. 13D.05, Subd. 3 (c)(3) to develop or consider offers/counteroffers for the purchase or sale of real property located at 340 Willow Drive N and other Fire Department property. Ayes: all.

A motion was made by Miner, seconded by Joyce, to adjourn the Closed Session. Ayes: all.

Mayor Miner summarized that the Council had just finished a Closed Session and had given direction to staff.

Mayor Miner recessed the meeting for a brief break at 7:55 pm, and reconvened the meeting at 8:00 pm.

Discuss Fire Chief Position (Continued)

Mayor Miner reported that the City had received a letter of resignation from Fire Chief Van Eyll. He noted that contractually, the Long Lake Fire Department is obligated to provide fire services through December 31, 2025 to the City of Medina and under contract to Minnetonka Beach through 2027. He indicated that he feels the Council should direct staff to post the position using the current job description. Because of the timeframe, he commented it is unlikely that the position would be filled by the time Chief Van Eyll leaves and he would suggest the Council have a plan to name a current member of the Department as an Interim Fire Chief until the position is filled on a more permanent basis.

Mayor and Council discussed a deadline for acceptance of applications and details surrounding the interview process. It was the consensus of the Council that the deadline for applications to be received should be by Monday, December 19, 2022 at 8:00 am.

Mayor Miner stated that he would send out an email to the firefighters to give them an update regarding the plan for posting the position.

ADJOURN

Hearing no objection, Mayor Miner adjourned the meeting by general consent at 8:12 pm.

Respectfully submitted,

Scott Weske
City Administrator